

Decade In Review



**Attorney General Jon Bruning
2012 Annual Report**



Dear Fellow Nebraskans,

Thomas Jefferson once said, “A morsel of genuine history is a thing so rare as to be always valuable.”

As I reflect on a decade of service as Attorney General, I’m proud of the historic work our office has done to protect Nebraskans. To highlight those efforts, it’s my pleasure to present the 2012 annual report. This report contains highlights from 2012 as well as a cumulative snapshot of the 10-year impact of the attorneys and staff of the Nebraska Attorney General’s Office.

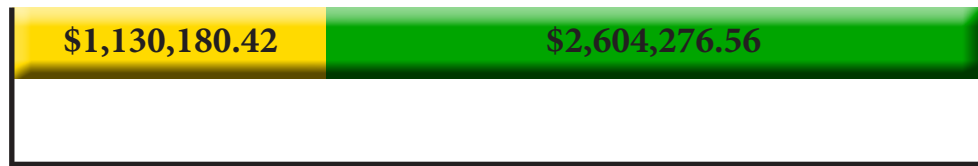
In 2012, we provided protection for our most vulnerable citizens. We have been the voice for victims of scams and frauds and returned or saved more than \$3.7 million to Nebraskans through our consumer mediation services. Our criminal section worked diligently to ensure violent criminals were put behind bars. The efforts of our Medicaid Fraud and Patient Abuse Unit resulted in recoveries totaling more than \$20 million. And we defended Nebraska’s natural resources and shielded state sovereignty against federal overregulation.

At the Nebraska Attorney General’s Office, we are driven by our continued commitment to make Nebraska a safer place to live and raise a family. I’m proud to present this Decade in Review as a testament to that commitment.

Sincerely,

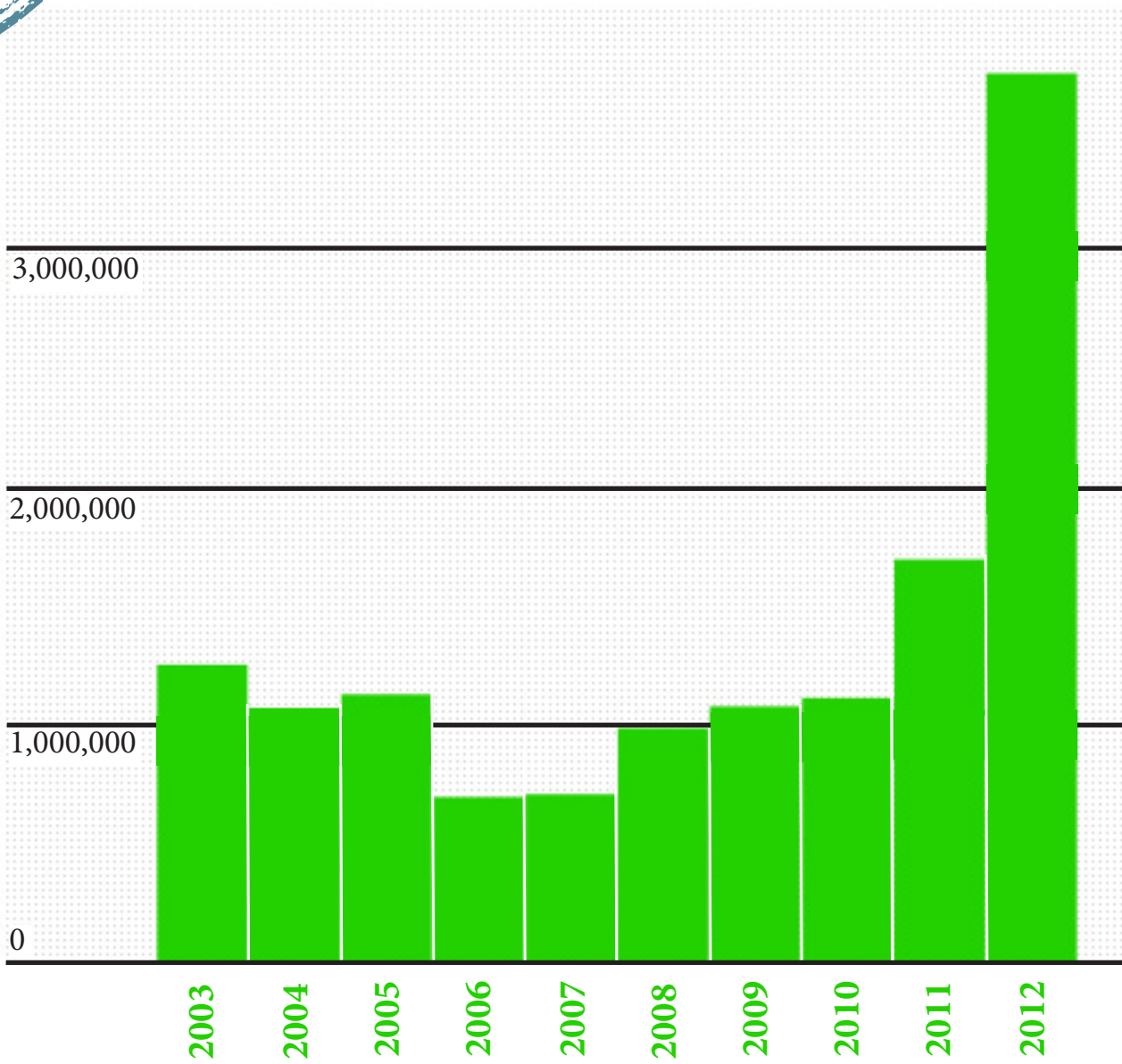


**More than \$3.7 Million Recovered or Saved
by the Attorney General's Mediation Center in 2012**



2012 Total : **\$3,734,456.98**

General Consumer Issues Mortgage/Foreclosure Settlements



Since 2003, an annual average of **\$1.1 Million** has been recovered by the Public Protection Bureau.

Attorney General Bruning's Medicaid Fraud Unit Recoveries Near \$65 Million

In December, Attorney General Jon Bruning announced his Medicaid Fraud Unit recovered more than \$20 million in 2012. Recovered funds reimburse the Medicaid program for losses and can be applied to legal fees specific to each case.

Since its beginning, the Unit has recovered more than \$64.8 million from violating service providers and drug companies.

In cooperation with the Nebraska Legislature, Bruning established the Unit in 2004 to investigate and prosecute Medicaid provider fraud and patient abuse.

When the Unit was established in 2004, AG Bruning promised the Nebraska Legislature it would be self-funding in three years. The annual recoveries surpassed its operating budget starting in 2006, a year ahead of schedule.

Therapist Liable for Medicaid Fraud

In September, Katherine Zupancic of Lincoln was found liable for violating the Nebraska False Medicaid Claims Act after a week-long jury trial in Lancaster County District Court.

While operating the business Zupancic Consulting and Counseling, Katherine Zupancic billed for therapy services provided to Nebraska Medicaid clients. An audit of medical records by the Attorney General's Medicaid Fraud Unit showed a lack of documentation for more than 3,000 cases. In these cases, the documentation failed to substantiate therapy services had ever been rendered. Nebraska Medicaid paid Zupancic more than \$100,000 for these unsubstantiated services.

The jury found Zupancic liable for violating the False Medicaid Claims Act, breach of contract and fraudulent misrepresentation. Jurors awarded the State \$99,785.05 in damages. Pursuant to statute, the Court ordered the damage award to be tripled and entered a judgment of \$299,355.15 in the State's favor.



Nebraska Nets Nearly \$5 Million in Civil and Consumer Settlements with Drug Manufacturer Abbott Laboratories

In May, Attorney General Bruning announced settlements with Abbott Laboratories that addressed allegations of illegal marketing of the manufacturer's drug Depakote. Nebraska's civil settlement was handled by the Attorney General's Medicaid Fraud Unit and returned more than \$3.7 million to Nebraska's Medicaid program.

The consumer settlement was handled by the Consumer Protection Division and netted \$1.2 million to Nebraska. The agreement marks the largest consumer protection-based pharmaceutical settlement ever reached. The funds were deposited in the Consumer Settlement Fund.

The \$1.5 billion settlement with Abbott Laboratories is the second-largest recovery from a pharmaceutical company in a single civil and criminal global resolution.



Public Protection Bureau Chief Lynne Fritz (right) and Assistant Attorney General Milissa Johnson-Wiles.

Tobacco Settlement Good Deal for Nebraskans

In December, Attorney General Jon Bruning announced a multi-state agreement with four major tobacco companies that settled a 10-year dispute regarding payments under the 1998 Master Settlement Agreement (MSA). This agreement will provide Nebraska approximately \$18 million in 2013 and will ensure continued payments in the future.

In 1998, the major tobacco companies agreed to pay states more than \$200 billion over 25 years to settle lawsuits over the health care costs related to smoking. For the past ten years, there has been a dispute between the tobacco companies and the states over portions of the payments.

Since 2003, Nebraska has received approximately \$300 million from the four largest tobacco companies. If not for the multi-state agreement, approximately \$40 million in payments would be at risk by continued arbitration.



Skechers Must Shape Up

In May, Attorney General Bruning announced a multi-state settlement with Skechers USA, Inc., the makers of Shape-Ups, Tone-Ups and the Skechers Resistance Runner athletic shoes. Under the settlement, Skechers allocated \$40 million for consumer refunds. Skechers agreed to pay an additional \$5 million to the states. Nebraska's portion was \$77,707.

Skechers allegedly made health-related claims in the marketing of its line of rocker-bottom shoe products that were not adequately substantiated. Among the claims in question were: wearing the shoes would cause consumers to lose weight, burn calories and would yield improved circulation. The shoes were also said to fight cellulite and firm, tone or strengthen thigh, buttock and back muscles.

Under the settlement, Skechers is prohibited from making these claims without confirming evidence.

RX Take-Back Program

At four national take-back events since May 2011, the Attorney General's Office and the Nebraska State Patrol collected a total of 2,988 lbs. of unwanted drugs in coordination with the DEA.

A total of nearly 21,000 lbs. was collected at Nebraska sites during the national events.



At the Lincoln take-back site, Nebraska State Trooper Jay Morrow collected unused prescription drugs for disposal.

A Decade of Child Protection

Since his election in 2002, Attorney General Bruning has earned a national reputation for his aggressive crackdown on sexual predators and child pornographers.

In 2009, his National Association of Attorneys General presidential initiative *Virtual World, Real Crime* created awareness and provided tools for members of law enforcement nationwide. Program training was provided to investigators, focusing on online file sharing of child pornography via peer-to-peer networks. In addition, train-the-trainer sessions were conducted to ensure the maximum reach of the investigative techniques.

Each year, Bruning works with members of law enforcement to develop and support his legislative package bills. Since 2003, the office has seen 36 legislative package bills successfully passed and signed into law. Many of Bruning's legislative package bills were designed to keep Nebraska's criminal code one step ahead of online predators.

Notable examples include 2004's LB 943, 2007's LB 142 and 2009's LB 97. LB 943 criminalized online enticement of children under 17. The crime was made a registerable offense by LB 97 and was expanded to include enticement through communications other than computers. LB 142 made it a crime to send sexually explicit materials to minors using electronic communication devices.

Bruning's child protection efforts were enhanced in 2010 by the creation of the Attorney General's Office Rural Cybercrime Unit (RCU). Since its inception, RCU investigators have initiated 136 investigations and made 51 arrests. RCU prosecutors have secured 28 convictions with 12 cases pending at year end 2012.

Bruning's RCU works closely with local, state and federal law enforcement to investigate and prosecute child sexual predators. Predators arrested by the Attorney General's Office have been prosecuted in both state and federal courts.



Criminal Bureau Chief John Freudenberg

In 2012, the Attorney General's Office
Criminal Bureau:
Prosecuted **650** criminal cases
Handled **672** criminal appeals
Investigated **169** criminal matters

Kirkpatrick Receives Life Sentence for Murder of 14-year-old Kailee Clapp

In November, Stathis Kirkpatrick, 20, was sentenced to life imprisonment for the 2011 murder of 14-year-old Kailee Clapp of McCook. Kirkpatrick pleaded no contest to the first-degree murder charge in September 2012.

Kailee Clapp was reported missing on January 21, 2011. Kirkpatrick lured Kailee from her home, murdered her and burned her body. Later that night, law enforcement discovered her body at the Bartley Cemetery.

Multiple law enforcement agencies aided in the investigation including the McCook Police Department, the Red Willow County Sheriff's Office, the Nebraska State Patrol and the FBI Evidence Recovery Team.



Robert Sheldon Sentenced for Largest Child Porn Collection Found to Date

In September, Robert A. Sheldon, 52, of Arlington, Nebraska was sentenced to 10 years in federal prison for receiving child pornography. The sentence stemmed from an investigation by the Attorney General's Office Rural Cybercrime Unit.

An IP address assigned to Sheldon's residence in Arlington was observed offering child pornography for sharing. Investigators obtained a search warrant for Sheldon's residence.

The search warrant was served in February 2012. The collection of child pornography recovered from the residence, over 200,000 images, was the largest observed by investigators with the Nebraska Attorney General's Office.

Included in Sheldon's collection were more than 600 images involving the sexual abuse and exploitation of children under the age of 1. Multiple images involving the rape and torture of prepubescent children were also found.

The court imposed a lifetime term of supervised release to commence upon the completion of Sheldon's 10-year sentence.

Dominick Dubray Sentenced to Two Life Terms for Murders

In December, Dominick Dubray, 26, of Alliance was sentenced to two terms of life imprisonment for the murders of Catalina "Cathy" Chavez, 22, and Mike Loutzenhiser, 42. In addition, he was sentenced to 30 to 40 years each for two counts of use of a weapon to commit a felony.

He was found guilty of the charges in October 2012.

Dubray was charged with the crimes in February 2012 after the victims were found dead in the home shared by Dubray and Chavez. Both victims had suffered multiple stab wounds.



Glazebrook Sentenced 30 to 60 Years for Witness Tampering and Terroristic Threats

In December, Jeffrey Glazebrook, 52, of Saunders County, was sentenced 30 to 60 years in prison each for one count of tampering with a witness and one count of making terroristic threats for threatening to kill a testifying witness during his 2009 trial for the murder of Sadie Mae McReynolds. The sentences are to be served concurrently.

The successful prosecution handled by Assistant Attorneys General Corey O' Brien and Matt Lierman ensured Glazebrook will be incarcerated for at least 20 years due to habitual criminal status.

In 2009, he was convicted of murder in the trial prosecuted by Saunders County Attorney Scott Tinglehoff and then Assistant Attorney General Doug Warner. The murder conviction was overturned by the Nebraska Supreme Court citing erroneous admission of evidence of Glazebrook's sexual and physical assaults of other women.

Two Sentenced in 2003 Kimball County Death

In August, Vencil Ash III, 41, and Kelly Meehan, 24, were sentenced in relation to the 2003 shooting death of Ryan Guitron. Ash was found guilty in July and was sentenced to life imprisonment for one count of first-degree murder. Meehan pleaded guilty to one count of being an accessory to a felony and was sentenced to the maximum 20 to 60 months in prison.

Ryan Guitron of Fort Collins, Colorado was last seen alive in October 2003. He was living with Vencil Ash and Kelly Meehan at the time.

In April 2010, Meehan told investigators Ash had taken Guitron to a farm in the fall of 2003, shot him in the head and buried his body in a woodpile. Members of law enforcement later located Guitron's body on an abandoned farm near Bushnell, Nebraska.

Joshua Keadle Sentenced 15 to 20 Years for Sexual Assault

In April, Joshua Keadle, 30, was sentenced to 15 to 20 years in prison on one count of first-degree sexual assault of a minor. In March, he was convicted by jury in Dodge County District Court.

Keadle was accused of sexually assaulting a 15-year-old girl at the dormitory of what was then Midland Lutheran College in December 2008. The victim, now 18, testified she had been asleep in the dormitory and woke up to find Keadle having sex with her. Keadle was 27-years-old at the time of the assault.

Octavio Miranda Sentenced in Death of Audrey Stubblefield

In February, Octavio Miranda, 29, of Omaha was sentenced to 10 to 14 years in prison on one count of motor vehicle homicide in Douglas County District Court. In addition, his driver's license was suspended for 15 years. Miranda pleaded no contest to the charge on December 1, 2011.

In July 2011, Miranda was driving his SUV over the speed limit when he failed to stop at a stop sign, attempted to drive the wrong way down a one-way street and collided with another vehicle.

After the collision, the driver and three passengers were trapped inside the wreckage forcing firefighters to extract them with the jaws of life. Passenger Audrey Stubblefield, 27, was rushed to Creighton University Medical Center in critical condition, where she later died from her injuries.

Salem Man Sentenced 40 to 55 Years for Sexual Assault

In November, James W. Graves, 28, of Salem, Nebraska was sentenced 40 to 55 years in prison for two counts of first degree sexual assault. In August, Graves pleaded guilty to the charges in Richardson County District Court. He was also required to register as a sex offender for 25 years.

The victim requested a protection order from local law enforcement after increasingly threatening behavior by Graves. On one occasion, Graves hid in the victim's car and terrorized her while she drove to work and threatened to kill her.

An investigation launched by the Nebraska State Patrol determined Graves had repeatedly sexually assaulted the victim over a three year period, beginning when she was 14-years-old.

Decade in Review:

In 2004, Attorney General Bruning's Legislative Package included LB 943 which cracked down on perpetrators of domestic violence by making strangulation a felony offense. Prior to LB 943, strangulation was a misdemeanor offense.

Beatrice Man Sentenced to 26 to 41 Years for Sexual Assault

In December, Joseph J. Buttercase, 30, of Beatrice, was sentenced to 20 to 30 years in prison for one count of first-degree sexual assault, four to five years for one count of false imprisonment, 20 months to five years for one count of strangulation and one year for one count of third-degree domestic assault. The sentences will run consecutively.

In July 2011, Buttercase assaulted the victim in his home over a period of more than three hours. The victim was punched in the face, head-butted, slammed onto the floor and strangled to near unconsciousness. At the conclusion of the extensive beating, she was violently sexually assaulted.

More than 100 exhibits were offered into evidence during the four-day trial, including blood and semen samples. After a deliberation of just two and a half hours, jurors delivered a guilty verdict.

Decade in Review:

As part of the Attorney General's 2006 legislative package, LB 1199 increased penalties for sex crimes against children under 12-years-old and required mandatory prison sentences for those who commit the most serious crimes.

Michael Stephens Sentenced for Sexual Assault of a Child

In March, Michael Stephens, 29, of Sutton was sentenced 15 to 40 years in prison on each of three counts of first-degree sexual assault of a child, to be served consecutively. He was convicted of the charges in January 2012.

In July 2011, Stephens was charged with sexually assaulting a six-year-old victim multiple times over a six month period.

A Decade of Protecting Nebraska's Natural Resources

In 2003, Attorney General Bruning reorganized the Office to better protect Nebraska agriculture and natural resources industries.

During the 2003 legislative session, Bruning sought and obtained funding from the Legislature to create the Agriculture, Environment and Natural Resources section (AENR).

The AENR vigorously defends and enforces the laws protecting Nebraska's natural resources. In addition, the Section works to push back against overregulation by the federal government, specifically the Environmental Protection Agency (EPA).

Since 2003, the Attorney General's Office has filed suit against the EPA more than 20 times.



EPA Rule Struck Down

In August, the U.S. D.C. Circuit Court of Appeals released its decision to strike down the Cross-State Air Pollution Rule proposed by the Environmental Protection Agency (EPA).

Projected capital costs and increased operating costs would have totaled more than \$60 million dollars for NPPD and OPPD alone. In addition, cities such as Hastings, Fremont and Grand Island would have faced millions in modification costs.

Rule Background:

The Cross-State Air Pollution Rule was mandated by the EPA to address a theoretical compliance issue in Milwaukee, Wisconsin and would have forced Nebraska power producers to retrofit coal plants to control emissions by January 1, 2012. The agency proposed to cap Nebraska's emissions in order to reduce the potential pollution caused by emissions traveling upwind to Wisconsin.

In December 2011, Nebraska was granted a motion to stay the rule, after convincing the Court of the likelihood of a successful challenge and the irreparable harm to Nebraska energy consumers. The cities of Grand Island, Fremont and Hastings provided support for the motion. Additional support was provided by Nebraska energy producers including NPPD, OPPD, LES and other public power districts.



In September, Katherine J. Spohn signed the Oath of Office after being promoted to Deputy Attorney General.

AG Bruning Challenges EPA's Rejection of State's Haze Plan

In May, Bruning filed suit challenging the EPA's rejection of a portion of Nebraska's regional haze state implementation plan.

After an extensive study, the Nebraska Department of Environmental Quality (NDEQ) determined no further sulfur dioxide controls were needed at the Gerald Gentlemen Station (GGS) coal-fired energy plant operated by the Nebraska Public Power District. NDEQ's study focused on compliance with the requirements of the Clean Air Act and EPA regulations as well as local area needs.

In contrast, the EPA's proposed plan would require multi-million dollar modifications to GGS, resulting in long-term environmental losses with only minimal short-term gains. In addition, due to significant additional water requirements needed for further controls at GGS, EPA's plan would not only be exceedingly expensive, it could also negatively impact water availability for agricultural needs of the area.

AG Bruning Fights to Protect Billions in Ethanol Sales from Unconstitutional Regulation

In March, Attorney General Bruning and six other states filed a brief in the Ninth Circuit Court of Appeals opposing enforcement of California's Low Carbon Fuel Standard (LCFS). In December 2011, the Eastern District of California found the regulation violated the Dormant Commerce Clause of the U.S. Constitution by discriminating against out-of-state ethanol producers.

California's LCFS mandates annual reductions in the "carbon intensity" for gasoline and other transportation fuels sold in California. The regulation assigns higher carbon intensity scores to corn ethanol produced in Nebraska and other Midwestern states compared to identical ethanol produced in California.

Nebraska Intervenes in Water Case

In June, Nebraska led the nine-state group that filed a motion to intervene in the lawsuit, *Gulf Restoration Network (GRN) et. al v. Jackson*, U.S. District Court for the Eastern District of Louisiana. Nebraska filed the motion to ensure states retain authority to establish water quality standards under the Clean Water Act.

GRN and other groups have asked the Court to force the EPA to institute specific, numeric criteria for total nitrogen and total phosphorus discharges in Nebraska and the entire Mississippi River watershed. The groups also want the EPA to impose total maximum daily load (TMDL) requirements for nitrogen and phosphorus within the watershed.



Legal Services Bureau Chief Dale Comer

The Legal Services' Roads Section defends the state in highway tort cases, highway contractor claims, workers' compensation cases and employment matters involving the Nebraska Department of Roads.

In 2012, the Roads Section recovered, collected or saved \$9,592,225 for the State.

2012 Legal Services Bureau by the numbers:

Provided legal services to 97 different state officers, state agencies, boards, committees and commissions.

Provided legal services to county attorneys and other public officials in 32 different Nebraska counties.

Prepared 15 formal and informal opinions of the Attorney General for state officers, state agencies and county attorneys.

Reviewed 46 formal written Open Meetings and Public Records Complaints.

Reviewed 91 sets of rules and regulations for state agencies, boards, and commissions.

Reviewed contracts for state agencies, boards and commissions with a total value in excess of \$34 million.

Assisted 207 Nebraskans with general questions about the Attorney General's Office or Nebraska law.

Commenced 703 separate new legal projects for state agencies and officials, including contract reviews, research projects, administrative cases from state agencies and other matters.

Litigated 129 civil cases for the state at all levels of the court system.



Darrel Parker and Attorney General Jon Bruning.

Bruning Says State Wronged Parker in 1956

In August, Attorney General Jon Bruning publicly apologized to Darrel Parker on behalf of the State of Nebraska for his 1956 wrongful conviction for the murder of his wife Nancy. Bruning filed an offer of judgment in the Lancaster County District Court requesting the maximum amount of \$500,000 plus \$1,700 in statutory costs to be awarded to Mr. Parker under Nebraska's 2009 Wrongful Conviction Act.

Bruning noted the State's decision was informed by the careful review of available records, including a confession to the crime from convicted murderer, Wesley Peery. While serving on death row for the murder of Marianne Mitzner of Lincoln, Peery confessed to killing other victims, including Nancy Parker. His confessions, initially protected by attorney/client privilege, were made public by his attorneys after he died of a heart attack in 1988.

Darrel Parker, 80, was paroled in 1970 and the State of Nebraska Pardons Board voted unanimously to give him a full pardon in 1991.

In May 2013, Parker's award claim was approved by the Nebraska Legislature and signed by Governor Dave Heineman.



A Decade of Successful Legislative Initiatives

Each year, the Attorney General's Office works with law enforcement and prosecutors around the state to develop a legislative package to provide stronger protections for Nebraskans.

The successful 2012 legislative session adjourned sine die on Wednesday, April 18.

**Since 2003,
36 Legislative Package bills have
become law.**

10th Annual Legislative Package Bills Passed to Protect Nebraskans

LB 793, provides protection for Nebraska taxpayers by limiting the abuse of the court system by inmates. The bill was modeled after a federal law and imposes a “three-strike” limit restricting inmates from wasting public resources after he or she has filed three or more civil cases determined by the court to be frivolous. The office prioritized the legislation in response to inmates who have made a career of filing frivolous lawsuits on the public dime. In one instance, an inmate filed 665 cases following his conviction, 88 of those frivolous cases in one year alone.

LB 670, amends the Uniformed Controlled Substances Act to include the class of synthetic materials used to make the drugs marketed and sold as bath salts. These dangerous drugs can be snorted, injected or smoked and may cause users to lose motor control and have extreme paranoia and erratic, violent behavior. Use and availability of this drug has dramatically increased since 2010, prompting the office to move quickly. Law enforcement reported individuals high on bath salts are a danger to themselves and those around them. The bill was passed with an emergency clause, making the ban effective immediately. LB 298, introduced by State Senator Beau McCoy in January 2013, added synthetic phenethylamines and tryptamines to the ban.

Under LB 799, negligent child abusers who seriously injure or kill a child will face felony charges. This bill protects the safety of Nebraska's children and works to ensure their lives are being valued as much as the lives of adults.

OUR FOCUS

The **Office of the Attorney General** strives to:

- Protect Nebraskans from fraudulent business practices and scams through consumer education.
- Uphold and protect the civil rights of all Nebraskans.
- Defend Nebraska's interests in disputes with other states over irrigation water and stream flows.
- Protect the public health and safety of Nebraskans by vigorously pursuing disciplinary actions against health care professionals who endanger the public through violations of health regulations or drug laws.
- Provide professional legal representation in all civil proceedings on behalf of the state.
- Save taxpayer dollars by fighting frivolous claims by inmates of correctional facilities.
- Uphold and defend the Constitution and laws of the State of Nebraska and the Constitution of the United States of America.
- Achieve a higher level of public safety and security by promoting the vigorous prosecution of murderers, drug dealers, child abusers and other criminals.
- Promote stronger law enforcement and reform in criminal procedure and criminal law.
- Provide skilled assistance to local prosecutors in prosecuting child sexual abusers, murderers and other violent criminals.
- Prevent and prosecute consumer fraud and deceptive trade practices.



CONTACT:

Nebraska Department of Justice
Attorney General Jon Bruning

2115 State Capitol Building
Lincoln, NE 68509
Phone 402-471-2682
Fax 402-471-3297
www.ago.ne.gov

Consumer Protection Line
Toll-free in Nebraska

1-800-727-6432